

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Dwight G. & Terry W. Branham)
 Dist. 1, Map 101J, Group A, Control Map 101J,) Hamilton County
 Parcel 20)
 Residential Property)
 Tax Year 2005)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$13,800	\$137,200	\$151,000	\$37,750

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on December 20, 2005 in Chattanooga, Tennessee. In attendance at the hearing were Dwight and Terry Branham, the appellants, and Hamilton County Property Assessor's representative Randy Johnston.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 1721 Big Lake Lane in Hixson, Tennessee.

The taxpayers contended that subject property should be valued at \$125,000. In support of this position, the taxpayers argued that the 2005 countywide reappraisal caused the appraisal of subject property and resulting taxes to increase excessively. In addition, the taxpayers asserted that subject property has experienced a loss in value because several homes in the immediate area are being rented after the owners unsuccessfully listed them for sale. Moreover, the taxpayers maintained that subject property experiences a diminution in value because of the topography of subject lot and damaged cedar siding caused by driller bees and woodpeckers. Furthermore, the taxpayers stated that the home across the street has five dogs kept outside and approximately two dozen cats. Finally, the taxpayers testified that their street has numerous potholes and is sinking.

The assessor contended that subject property should be valued at \$163,400 as it was prior to the ruling of the Hamilton County Board of Equalization. In support of this position, seven comparable sales were introduced into evidence. Mr. Johnston argued that the comparables support a value range of \$158,000 to \$186,200. Mr. Johnston correlated the various indications of value at \$79 per square foot or \$164,300.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should remain valued at \$151,000 based upon the presumption of correctness attaching to the decision of the Hamilton County Board of Equalization.

Since the taxpayer is appealing from the determination of the Hamilton County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the fair market value of subject property as of January 1, 2005 constitutes the relevant issue. The administrative judge finds that the Assessment Appeals Commission has repeatedly rejected arguments based upon the amount by which an appraisal has increased as a consequence of reappraisal. For example, the Commission rejected such an argument in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) reasoning in pertinent part as follows:

The rate of increase in the assessment of the subject property since the last reappraisal or even last year may be alarming but is not evidence that the value is wrong. It is conceivable that values may change dramatically for some properties, even over so short of time as a year. . .

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. . . .

Final Decision and Order at 2. Similarly, the Commission has ruled that taxes are simply irrelevant to the issue of value. See *John C. & Patricia A. Hume* (Shelby Co., Tax Year 1991).

The administrative judge finds merely reciting factors that could cause a diminution in value does not establish the current appraisal exceeds market value. The administrative judge finds the Assessment Appeals Commission has ruled on numerous occasions that one must *quantify* the loss in value one contends has not been adequately considered. See, e.g., *Fred & Ann Ruth Honeycutt* (Carter Co., Tax Year 1995) wherein the Assessment Appeals Commission ruled that the taxpayer introduced insufficient evidence to quantify the loss in

value from the stigma associated with a gasoline spill. The Commission stated in pertinent part as follows:

The assessor conceded that the gasoline spill affected the value of the property, but he asserted that his valuation already reflects a deduction of 15% for the effects of the spill. . . . The administrative judge rejected Mr. Honeycutt's claim for an additional reduction in the taxable value, noting that he had not produced evidence by which to quantify the effect of the "stigma." The Commission finds itself in the same position. . . . Conceding that the marketability of a property may be affected by contamination of a neighboring property, we must have proof that allows us to quantify the loss in value, such as sales of comparable properties. . . . Absent this proof here we must accept as sufficient, the assessor's attempts to reflect environmental condition in the present value of the property.

Final Decision and Order at 1-2. Similarly, in *Kenneth R. and Rebecca L. Adams* (Shelby Co., Tax Year 1998) the Commission ruled in relevant part as follows:

The taxpayer also claimed that the land value set by the assessing authorities. . . was too high. In support of that position, she claimed that. . . the use of surrounding property detracted from the value of their property. . . . As to the assertion the use of properties has a detrimental effect on the value of the subject property, that assertion, without some valid method of quantifying the same, is meaningless.

Final Decision and Order at 2.

The administrative judge finds the taxpayers testified on cross-examination that they have not obtained any estimates concerning the cost to repair the cedar siding. The administrative judge finds that without such proof one cannot begin to analyze any possible loss in value due to this particular program.

The administrative judge finds that just as the burden of proof falls on the taxpayers to support a reduction in value, the assessor has the same burden when seeking to raise the value established by the county board of equalization. Respectfully, the administrative judge finds that the preponderance of the evidence supports retention of the \$151,000 value adopted by the Hamilton County Board of Equalization. The administrative judge finds that although Mr. Johnston's sales comparison approach comports with generally accepted appraisal practices, the taxpayers identified several factors affecting the value of their property that do not seemingly affect the comparables to the same degree.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$13,800	\$137,200	\$151,000	\$37,750

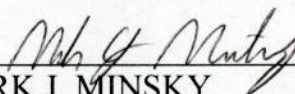
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 12th day of January, 2006.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Terry Branham
Bill Bennett, Assessor of Property